APPENDIX A

COURT OF APPEALS OF KENTUCKY

FEBRUARY 26, 1965

WOODROW W. RUNYON, SR., - - - - *Appellant,*

v.

COMMONWEALTH OF KENTUCKY, - - - *Appellee.*

Appeal from Pike Circuit Court,
Honorable James B. Stephenson, Judge.

OPINION OF THE COURT BY JUDGE STEWART—AFFIRMING.

Appellant, Woodrow W. Runyon, Sr., was convicted in the Pike Circuit Court under an indictment charging him with submitting a false claim to the Pike County Board of Education. See KRS 434.240. He was given one year in the penitentiary. It is from this conviction and his subsequent sentence that he appeals. The grounds urged for reversal of the judgment are:

1. No public offense was charged: (a) KRS 434.240 does not apply because a school district is not a political subdivision of the state; and (b) the indictment does not charge the offense defined by the statute.

2. There was a variance between the allegations of the indictment and the proof.

3. The procedure followed by the Commonwealth denied him his state and federal rights to a speedy trial.

4. He has been subjected to double jeopardy by the herein conviction.

We shall answer each of these questions in the order presented.

Up until the approximate time the indictments hereinafter mentioned were returned by the grand jury, appellant was the supervisor of school buses for the Pike County Board of Education. One of his duties as such was to purchase parts for the repair of the buses owned and operated by the Board and to submit claims therefor for approval of the payment by the Board.

At a date not set forth in the record, he began the practice of submitting false claims from a nonexistent auto-parts firm by the name of "Curtis Auto Parts" at Williamson, West Virginia. He would present the false invoice to the Board and it would approve it. He would then write the word "hold" on this invoice, thus instructing the finance officer of the Board (who mailed out the Board's checks) to hold the check for appellant to personally pick up. He would then obtain the check and deposit it in the First National Bank of Williamson, West Virginia, under the fictitious name of "T. C. Curtis, Curtis Auto Parts." One spurious invoice dated June 4, 1963, was for $452.25 and it is this transaction that is the basis for the indictment and conviction involved in this appeal. This particular invoice and a check for the amount mentioned were not held to be picked up later by appellant but were mistakenly mailed to "Curtis Auto Parts" of Williamson, West Virginia, by the finance officer. The envelope and its contents came back stamped, "Addressee Unknown," and subsequent investigation carried out by the Board unfolded appellant's numerous alleged fraudulent acts.

On January 9, 1963, appellant was indicted by the grand jury for embezzling $18,178.01, this being the total amount he is accused of abstracting from the Board. He entered a plea of not guilty on January 14th. After a general continuance the case was set for trial on June 17, 1963. At some time before June 15th, the grand jury returned thirty-two indictments against him for submitting false claims "to the Pike County Board of Education, a political subdivision of the Commonwealth of Kentucky."

On June 15th the Commonwealth's attorney filed a motion to dismiss the embezzlement indictment for the reason that the thirty-two indictments covered the same sums of money alleged in the original indictment to have been embezzled, whereas the offenses of submitting false claims, not the offense of embezzlement, were the alleged crimes for which he should be tried. One June 17th the circuit judge overruled this motion and, over the strenuous objections of the Commonwealth's attorney, proceeded to trial on the embezzlement charge. The Commonwealth's attorney refused to prosecute under this charge and introduced no evidence. Also, no evidence was introduced on behalf of appellant. The jury, after being instructed, retired and came back with a not-guilty verdict.

In November of 1963 Runyon was tried on one of the thirty-two indictments for submitting a false claim, namely, the one mentioned above involving $452.25, and was convicted.

Appellant's contention that KRS 434.240 does not apply because, as claimed, the Pike County school district is not a political subdivision of the Commonwealth of Kentucky, is refuted by both the statutory and the case law of this state. We need only set forth brief statements from some of the authorities in order to settle this issue definitely. KRS 61.420(5), in defining a political subdivision, states that it includes "counties, municipal corporations, and

school districts." The case of Board of Education of City of Corbin v. City of Corbin, 301 Ky. 686, 192 S. W. 2d 951, 952, states as follows: "Although some of the independent districts are coterminous with cities of the Commonwealth, each is a municipality or **political subdivision** separate and distinct from such a city." (Emphasis added.) Board of Education of Louisville v. Society of Alumni of L.M.H.S., Inc., Ky., 239 S. W. 2d 931, makes this relevant statement: "In this State public education has long been recognized as a function of State government, and members of boards of education have been held to be state officers." See also City of Louisville et al. v. Board of Education of Louisville, 302 Ky. 647, 195 S. W. 2d 291, and City of Louisville v. Commonwealth, 134 Ky. 488, 121 S. W. 411.

Thus, the only conclusion possible is that the Pike County school district is a political subdivision of this state, the members of which are state officers, and it follows that the indictment drawn under KRS 434.240 did charge a public offense.

As a subdivision of his first point appellant also maintains the indictment is defective because it fails to allege a specific intent to commit the crime. KRS 434.240 denounces three things in connection with any claim made aganst the state or any political subdivision thereof: (a) Making a false and fraudulent statement of an account; (b) fraudulently omitting to make a true statement of an account; and (c) altering a statement after it has been accurately made. This statute then says, in part, there must be a fraudulent intent: First, "to conceal the true conditions of the account"; or secondly, "to acquit any person of such an account"; or thirdly, "to obtain, or enable any other person to obtain, money, or other moveable thing of value, from the state or any political subdivision of the state, when the person was not entitled to the money or any other moveable thing of value."

In this case the gravamen of the crime purportedly committed was the falsification of a claim against a political subdivision. The indictment in substance averred that appellant submitted "a false claim in the sum of $452.25 and, as a result, caused the Pike County Board of Education to pay that amount."

The caption of the indictment, pursuant to RCr 6.10(3), "shall state" the particular statute under which the indictment was drawn, but an error in or omission of the citation relied upon is not a ground for dismissal of the indictment or reversal of a conviction, unless such error or omission misleads a defendant prejudicially. Subsection 1 of this Rule states that "the caption shall be a part of the indictment." Under subsection 2 of the same Rule an indictment is sufficient if it contains a "plain, concise and definite statement of the essential facts" that constitute the particular offense "with which the defendant is charged."

As the purpose of an indictment is to apprise the accused, with reasonable certainty, of the offense charged, it seems clear that such was done here. Under the provisions of RCr 6.10, which we have noted in detail above, it becomes unnecessary to restate all the technical requisites of the crime of which a defendant is accused, if the language of the indictment, coupled with the applicable statute, unmistakably accomplishes this end result.

Appellant next asserts there is a variance between the allegations of the indictment and the evidence introduced. He maintains that, whereas the indictment avers the claim he submitted caused the Board to "pay the sum of $452.25 to said Curtis Auto Parts," the Commonwealth's own proof reveals the Board made no actual outlay of money on this claim. A reading of KRS 434.240, the statute under which appellant was indicted, will disclose that the actual receiving of the money by the perpetrator of the act is not an element of the offense of submitting a false claim. The

alleged criminal act, in the case at bar, was the submission of a false account to the Board. It was unnecessary to cash in on the fraud, which was attempted but foiled, in order to make the crime complete. The case of Braswell v. Commonwealth, Ky., 339 S. W. 2d 637, states: "Generally, a variance between the indictment and the proof is not regarded as material unless it misleads the accused in making his defense or exposes him to the danger of a second conviction of the same offense." Appellant does not contend in the present case that he was misled by the indictment to the extent that he was unable to resort to the proper measures to protect himself. We conclude this point is groundless.

Appellant's next complaint is that he was denied a speedy trial, and thus there was a violation of the right in this respect guaranteed him by the Sixth Amendment to the Constitution of the United States and Section 11 of the Constitution of Kentucky. The record discloses the indictment was returned in June of 1963 and appellant's trial was in November of 1963. This Court has held that a man indicted in May, 1954, and tried in November, 1955, was not deprived of the benefit of a speedy trial. See Clark v. Commonwealth, Ky., 293 S. W. 2d 465. The speedy trial provision of the Sixth Amendment to the Constitution of the United States does not apply in state prosecutions. See Barker v. Commonwealth, Ky., 385 S. W. 2d 671, citing Odell v. Burke, 281 F. 2d 782 (7 CA). However, the due process clause of the Fourteenth Amendment to the Constitution of the United States is applicable. Jones v. Commonwealth, 114 Ky. 599, 71 S. W. 643, relied upon by appellant is distinguishable from the present case.

Appellant's final contention is that he has been put in double jeopardy by his conviction of the offense in this case. He, in effect, argues that his acquittal under the

embezzlement indictment is a bar to this action. In Moss v. Jones, Ky., 352 S. W. 2d 557, 558, this Court defined double jeopardy in this concise manner: "In plain language, the doctrine is that a person may not be tried or prosecuted the second time for the same offense." Braswell v. Commonwealth, Ky., 339 S. W. 2d 637, 638, said: "The 'same offense' within the constitutional meaning does not signify the same offense by name or designation but has been defined as the same criminal act or omission." In Easley v. Commonwealth, Ky., 320 S. W. 2d 778, 779, this statement appears: "The test to determine whether the acts committed at the same time and place constitute one or more offense is, if proof of what is set out in the second indictment made on the trial of the first indictment would sustain it, then the two indictments are for the same offense. If what is set out in the second indictment when proved upon the trial of the first will not sustain it, then they are distinct offenses, and the conviction or acquittal of either is not a bar to the other."

We have heretofore detailed the main ingredients which constitute the offense of falsifying a claim against a political subdivision. Embezzlement, simply stated, is a fraudulent conversion of personal property after its possession has been lawfully acquired. See Roberson's New Kentucky Criminal Law and Procedure (2nd Ed.) sec. 897, p. 1117. See also subsections 1 and 2 of KRS 434.220. Both falsifying a claim against a political subdivision and embezzlement are statutory offenses. It is readily apparent different elements make up each crime.

Applying the principles of law to the facts in this case, we are of the opinion that embezzlement and submitting a false claim to a political subdivision are separate offenses. If the elements of the latter were established at the embezzlement trial, they would not sustain the embezzlement

charge, hence an acquittal under an indictment for either would not be a bar to an indictment for the other.

Wherefore, the judgment is affirmed.

Attorney for Appellant:

JEAN L. AUXIER,
Pikeville, Kentucky.

Attorneys for Appellee:

ROBERT MATTHEWS,
Attorney General,
Capitol Building,
Frankfort, Kentucky,

J. T. FRANKENBERGER,
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Capitol Building,
Frankfort, Kentucky.

APPENDIX B

ORDERS PIKE CIRCUIT COURT

17th day of June 1963

Commonwealth Order Book #49, Page 44

COMMONWEALTH OF KENTUCKY

v.

WOODROW W. RUNYON

No. 33

EMBEZZLEMENT—JURY AND VERDICT.

This case being called for trial, the Commonwealth requested a hearing on the motion to dismiss the indictment which motion was filed on June 15, and the Court and parties withdrew to chambers and said hearing.

Thereupon the Court overruled said motion to dismiss the indictment, and directed the trial to proceed. The Commonwealth's Attorney refused to prosecute the case, and the Court proceeded to the selection of the Jury. Thereupon the clerk drew from lot the following jury, to-wit: Rethia Porter, Ira Mullins, Earl Blackburn, J. L. Williamson, Allison Blankenship, Rufus Tackett, Pearl Lemon, Buff Wolford, Mrs. Laura Keathley, Lonnie Bevins, Mrs. Gladys Conley and Mordicia Blackburn, who were duly qualified, accepted by the defendant, and who were duly sworn as the law directs. The Jury having heard the indictment read by the Clerk, the defendant's plea and the written instructions by the Court, retired for deliberation and afterwards returned into open court with the following verdict, to-wit:

"We the Jury agree and find the defendant, Woodrow W. Runyon, not guilty. Mordicia Blackburn, one of the Jurors."

Thereupon the defendant was allowed to go hence without day.

STATE OF KENTUCKY
COUNTY OF PIKE } SCT:

I, CLAUDE REED, Clerk of the Circuit Court in and for the county and state aforesaid, do hereby certify that the foregoing typewritten matter is a true and correct copy of the Order showing the Jury and Verdict, in the case of The Commonwealth of Kentucky vs. Woodrow W. Runyon, being indictment No. 33, as appears of record in my said office and on file therein.

Witness my Hand and Seal of Office this the 8th day of February, 1966.

(s) CLAUDE REED,
Clerk, Pike Circuit Court,

By (s) BETTY PRATER JUSTICE,
Deputy Clerk.

(Seal)

APPENDIX C

PIKE CIRCUIT COURT

No. 503

COMMONWEALTH OF KENTUCKY

v.

C. H. FARLEY
HERBERT COOL
WOODROW W. RUNYON, SR.

INDICTMENT FOR MISAPPLICATION OF MONEY BELONGING TO STATE.

A TRUE BILL

(s) M. A. Blackburn
Foreman of Grand Jury

Presented by the foreman in the presence of the Grand Jury, to the Court and filed in open court, this 3 day of June, 1964.

(s) CLAUDE REED,
Clerk, Pike Circuit Court.

Witnesses:
Wilena Justice, Pikeville
John Henry Smith, Pikeville
Rell West, Canada, Ky.
Phyllis Faulkner, Pikeville
Rush Sword, Pikeville

Bruce Jones, Williamson, W. Va.
John P. Compton, Pikeville
Fred W. Lugart, Jr., Louisville, Ky.
Kyle Vance, Louisville
George W. Coleman, Pikeville
Tillie Reed, Pikeville
Ray Burke, Pikeville
Alvery Potter, Pikeville

PIKE CIRCUIT COURT

COMMONWEALTH OF KENTUCKY *v.* C. H. FARLEY HERBERT COOL WOODROW W. RUNYON, SR. Defendant(s)	KRS 434.020

The grand jury charges:

On or about the 2 day of June, 1964, and before the finding of this indictment in Pike County, Kentucky, the above named defendant(s) committed the offense of willfully misapplying, using, and fraudulently disposing of money in their custody and while under a duty to specifically apply same, belonging to the Pike County Board of Education, with the intent to deprive said Board of the money for defendants' benefit or for the benefit of others, by aiding, abetting, and permitting defendant, Woodrow W. Runyon, Sr., an employee of said Board under the supervision of defendant C. H. Farley, to use money belonging to said Board for a purpose not authorized by law and to submit a false claim to said Board in the form of Invoice No. 5669

of the Curtis Auto Parts in the sum of $469.00, which invoice and claim was known by defendants, C. H. Farley, Herbert Cool, and Woodrow W. Runyon, Sr., to be fraudulent and as a result of same caused the Board to pay said sum of $469.00 to Curtis Auto Parts by Check No. 3819, dated 9-10-57 and drawn on the Pike County Board of Education, against the peace and dignity of the Commonwealth of Kentucky.

A True Bill

(s) M. A. BLACKBURN
Foreman

APPENDIX D

COMMONWEALTH ORDERS PIKE CIRCUIT COURT

Commonwealth Order Book # 50, Page 64
17 day of February, 1965

COMMONWEALTH OF KENTUCKY *v.* C. H. FARLEY HERBERT COOL WOODROW W. RUNYON, SR.	Indictments Nos. 503, 504, 505, 508, 509, 510, 512, 517, 519, 522, 523, 524, 525, 526, 527, 528, 533, 506, 507, 511, 513, 514, 515, 516, 518, 520, 521, 529, 530, 531, 532, 534
AND	
COMMONWEALTH OF KENTUCKY *v.* C. H. FARLEY HERBERT COOL	Indictment No. 502
AND	
COMMONWEALTH OF KENTUCKY *v.* C. H. FARLEY	Indictments Nos. 483, 485, 486, 488, 489, 493, 498, 499, 500, 484, 487, 490, 491, 492, 494, 495, 496, 497, and 501
AND	
COMMONWEALTH OF KENTUCKY *v.* HERBERT COOL	Indictment No. 629
AND	
COMMONWEALTH OF KENTUCKY *v.* ALVERY POTTER	Indictments Nos. 627 and 628

ORDER.

Pursuant to the opinion of the Court heretofore filed and made a part of the record, it is ordered by the Court that the petitions for change of venue filed by the defendants, C. H. Farley, Herbert Cool and Alvery Potter, in each and all of the above captioned cases be and they are hereby sustained and that these prosecutions be and they are hereby transferred to the Circuit Court of an adjacent County, which Court shall have and take jurisdiction with full power to decide all pending motions and to proceed to try and finally dispose of these prosecutions, to which the plaintiff objects.

For the reasons set forth in the opinion, it appears to the Court that the interest of justice would be best served by the transfer of these cases to the Floyd Circuit Court. However, if either the Commonwealth or defendants have any objections to a transfer to that Court such objections shall be immediately submitted in writing supported by such evidence as the objecting party deems necessary. In the event no written objection is filed within seven days from the date of the entry of this order, the attorneys are hereby directed to prepare an order transferring these proceedings to the Floyd Circuit Court.

This February 17th, 1965.

SCOTT REED, *Special Judge.*

STATE OF KENTUCKY }
COUNTY OF PIKE } SCT:

I, CLAUDE REED, Clerk of the Circuit Court in and for the county and state aforesaid, do hereby certify that the foregoing typewritten matter is a true and correct copy of the Order transferring cases to the Floyd Circuit Court, as entered in the cases of The Commonwealth of Kentucky v. C. H. Farley, Herbert Cool, Woodrow W. Runyon, Sr.,

and Alvery Potter, as appears of record in my said office and on file therein.

Witness my Hand and Seal of office this the 7th day of February, 1966.

(s) CLAUDE REED,
Clerk, Pike Circuit Court,
By: (s) BETTY JUSTICE,
D. C.

(Seal)

APPENDIX E

FLOYD CIRCUIT COURT

Orders Commonwealth Causes
Extended April-May Term, 46th day
27th day of May, 1965

#503-534 Inc.

COMMONWEALTH OF KENTUCKY, - - - *Plaintiff,*

Against

C. H. FARLEY,
HERBERT COOL,
WOODROW W. RUNYON, SR., - - - *Defendants.*

ORDER QUASHING THESE INDICTMENTS AGAINST DEFENDANT, WOODROW W. RUNYON, SR.

The above styled cases are before the Court on the Separate motion of the defendant, Woodrow W. Runyon, Sr., to dismiss the indictments as to him.

Prior to the transfer of these cases to this Court from Pike County on change of venue, thirty-two indictments,

styled Commonwealth of Kentucky versus Woodrow W. Runyon, Sr., Nos. 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 130, 131, 132, 133, 134, 135 and 136, in each of which the defendant, Woodrow W. Runyon, Sr., is charged with the offense of filing a false claim, has been transferred to this Court on a change of venue from Pike County and are now pending in this Court.

An examination of Indictments Nos. 104 to 136, inclusive, excluding therefrom No. 129, against Woodrow W. Runyon, Sr., and Indictments Nos. 503 and 534, inclusive, charging defendants, Runyon, Farley and Cool, with misapplication of funds, are all based on the claims alleged to have been filed by the defendant Runyon, with the Pike County Board of Education.

Indictments Nos. 104 to 136 inclusive, excluding No. 129, against Woodrow W. Runyon, Sr., individually, were returned by the Grand Jury of Pike County at the June 1963 Session of the Pike Circuit Court under the provisions of KRS 434.240, whereas these indictments, Nos. 503 to 534, inclusive, now before the Court on motion of the defendant, Woodrow W. Runyon, Sr., to dismiss as to him, were returned under the provisions of KRS 434.020 by the June 1964 Grand Jury of Pike County.

The Court having considered the record and the facts aforesaid and being advised, is of the opinion that the Commonwealth is not entitled to maintain the above captioned indictments as to the defendant, Woodrow W. Runyon, Sr., and the Court will treat his motion to dismiss these indictments as a motion to quash each and all of them.

It is ordered and adjudged by the Court that the above captioned indictments against C. H. Farley, Herbert Cool and Woodrow W. Runyon, Sr., be and each and all of them

are hereby quashed as to the defendant, Woodrow W. Runyon, Sr.

(s) HOLLIE CONLEY, *Judge.*

STATE OF KENTUCKY
COUNTY OF FLOYD } SCT

I, FRANK DEROSSETT, Clerk of the Circuit Court for the County and State aforesaid, hereby certify that the foregoing is a true and correct copy of the Order entered May 27, 1965, in the cases of Commonwealth of Kentucky v. Woodrow W. Runyon, Sr., et al #503-534 Incl. as appears of record in Commonwealth Order Book No. 37, page 125, in my office.

Given under my hand this February 9, 1966.

FRANK DEROSSETT, *Clerk,*
By (s) CHRISTINE SPRADLIN, *D. C.*

(Seal)